IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 20344 of 2004

Between:

1 The Registrar, A.P. Administrative Tribunal,
Purani Haveli, Hyderabad - 500 002.
2 The Secretary to Government, Government of Andhra Pradesh, GAD (Ser.C) Department, A.P. Secretariat, Hyderabad.

..... PETITIONERS

AND

Sri. K. Kumara Swamy, S/o. K. Kistaiah,
O/o. A.P. Administrative Tribunal, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ, order or direction, especially one in the nature of Writ of Certiorari,

declaring the order passed in O.A.No.3840 of 1998, dated 16-08-2004 on the file of the A.P. Administrative Tribunal, as illegal and quash the same.

Counsel for the Petitioners: GP FOR SERVICES II

Counsel for the Respondent: MR.M.RATNA REDDY

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed assailing the order, dated 16.08.2004, passed by the A.P. Administrative Tribunal, in O.A.No.3840 of 1998.

2. The respondent was appointed as Typist in A.P. Administrative Tribunal, Hyderabad on 02.03.1977 and thereafter, he was promoted to the post of Senior Assistant on 25.11.1983. Next promotion lies to the post of Court Officer. As per the Rules the promotion was affected on merit-cum-seniority basis and the petitioner was promoted as Court Officer on 20.02.1992 and as on today he is working in the said capacity. The further promotion lies to the post of Assistant Registrar from the cadres of Court Master and Court Officer in the ratio of 1:1.

3. However, one Mr. S. Narasimha Reddy filed O.A.No.59508 of 1990 before the Tribunal claiming promotion to the post of Assistant Registrar from 18.09.1989. The said O.A. was allowed by an order, dated 18.03.1996, wherein, the Tribunal directed that the said Narasimha Reddy should be promoted as Assistant Registrar from 18.09.1989 on notional basis. Taking clue from the order passed by the Tribunal, the petitioner filed O.A.No.3840 of 1998 seeking promotion notionally as a Court Officer from 18.09.1989 on the ground that the vacancy arose consequent on the notional promotion of Mr.S.Narasimha Reddy to the post of Assistant Registrar and therefore, he should be deemed to have promoted with retrospective effect in the post fell vacant notionally from 18.09.1989 in the cadre of Court Officer.

4. Learned Tribunal, after considering the matter, allowed the O.A. by an order, dated 16.08.2004, against which the present Writ Petition has been filed.

5. Learned Government Pleader submits that the order passed by the Tribunal is not sustainable, inasmuch as, Narasimha Reddy was granted relief on the basis of the merits in his case and in fact the vacancy did not arise in 1989 as he was granted only notional promotion. If this has to be accepted, it will have a chain reaction and the employees in the other categories, viz., Junior Assistants and Senior Assistants, will claim the post on notional basis. Thus, the learned Government Pleader would submit that the order of the Tribunal is not sustainable and is liable to be set aside.

6. On the other hand, the learned counsel for the respondent Mr. Ratna Reddy submits that since the vacancy was deemed to have arisen from 1989 consequent on the notional promotion given to Mr.Narasimha Reddy, the Tribunal directed that the petitioner shall be deemed to have been promoted from 1989 onwards, but, however, the Tribunal did not grant any monetary benefits and that the promotion was directed to be treated as notional basis. He also refers to the identical decision rendered by the Tribunal in O.A.No.5486 of 1996, wherein, one Mr.Rama Krishna Sastry was given identical benefits as was granted to Mr.Narasimha Reddy and in fact he was given better benefits viz., salary for the period of notional promotion and that order became final and the Tribunal did not challenge the order before this Court in the Writ Petition. Therefore, the learned counsel would submit that the order passed by the Tribunal cannot be said to be illegal and contrary to law.

7. We have considered the respective contentions.

8. The main sheet anchor of the respondent for claiming the promotion is the notional promotion given to one Mr.Narasimha Reddy from 18.09.1989. This aspect was considered by the Tribunal and it was discussed in Para Nos.5 and 6, which are extracted below:

> "5. After hearing the learned counsel for the applicant and the learned GP and after going through the record, it is clear that the applicant is claiming promotion in place of Sri Narasimha Reddy. The said Narasimha Reddy was actually promoted from the post of Court Officer as Assistant Registrar with

effect from 08-09-1994 as per his turn and seniority. In OA.No.58508 of 1990 decided on 18-03-1996, Sri S.Narasimha Reddy succeeded in claiming notional date of promotion i.e., 18-09-1989. Such being the case, a vacancy automatically arose on notional basis with effect from 18-09-1989. It is not the case of the respondents that the applicant was not either qualified or eligible or not fit for promotion. It is only that there was no clear vacancy and as such, the applicant was not given notional date for promotion. But, the fact remains that such vacancy occurred notionally with effect from 18-09-1989 for Sri Narasimha Reddy Court Officer was promoted as Assistant Registrar. It is quite immaterial whether that promotion accorded by the Tribunal to Sri Narasimha Reddy is a matter of right or as a matter of sympathy, as the fact of his promotion and consequential vacancy, remains. With regard to the objection raised by the Respondents that such notional promotion will pave way for other employees working in the successive feeder categories to claim notional promotion, cannot be sustained as each case has to be decided on its own merits.

6. In respect of Sri Narasimha Reddy who given notional date of promotion as Assistant Registrar, he was given actual financial/monetary benefits only from the date of his assumption of charge as Assistant Registrar, but not from the notional date of promotion. Similarly in respect of this applicant also, this Tribunal directs that the applicant shall be entitled for promotion with effect from 18-09-1989 duly allowing his claim with the benefit of fixation of pay from that notional date of promotion i.e.18-09-1989 with consequential annual increments from that date. But, however, the monetary benefit arising out of such re-fixation of the pay of the applicant with effect from 18-09-1989 shall be only from 19-02-1992 i.e., the date on which he physically occupied the post of Court Officer. For all purposes of seniority, promotion and pension, such notional period shall count. Necessary orders in this regard shall be communicated within a period of **three months** from the date of receipt of this order."

9. Since, the vacancy was deemed to have arisen on notional basis from 18.09.1989 when Narasimha Reddy was promoted and the respondent being the only candidate available for promotion, we find such an order cannot be said to be illegal and contrary to law. Thus, we do not find any ground to interfere with the order of the Tribunal.

10. Learned Government Pleader submits that the respondent cannot be allowed to take the advantage of an illegal order and he refers to the decision rendered by the Supreme Court in ***CHANDIGARH ADMINISTRATION AND ANOTHER v JAGJIT***

SINGH AND ANOTHER. In fact he has submitted that the order passed by the Tribunal in Rama Krishna Sastry's case in O.A.No.5486 of 1996 was not sustainable.

11. We are not inclined to consider this aspect, inasmuch as the matter is considered on the merits of the case without referring to Rama Krishna's case.

12. Accordingly, the Writ Petition is dismissed. No costs.

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G. BIKSHAPATHY, J.

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P.S. NARAYANA, J.

Date: 08.02.2005

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To

1 The Registrar, A.P. Administrative Tribunal,
Purani Haveli, Hyderabad - 500 002.
2 The Secretary to Government, Government of Andhra Pradesh, GAD (Ser.C) Department, A.P. Secretariat, Hyderabad.

3 2 CCs to the G.P. for Services-II, High Court of A.P., Hyderabad (OUT).

4 2 CD copies